existence for four and one-half years, over the course of which only three employees (only two of whom, Webb and Planell, were minorities) had been given any such interests. One of the three employees (O'Brien) had relinquished his interest in December, 1985, see SBH Exh. 8, p. 3; a second (Webb) had relinquished hers in March, 1986, see SBH Exh. 10; and the third (Planell) relinquished hers in November, 1988, see SBH Exh. 23, p. 7.

178. All forms of this particular memo/letter (i.e., SBH Exhs. 58-61) included discussions of the potential impact of ACCLP's partnership structure on any comparative proceeding which might be held relative to the Channel 18 authorization. In that regard, all versions referred to a "recent" case (Stanley Group Broadcasting, 3 FCC Rcd 5017, 65 RR2d 341 (Rev. Bd. 1988) [45/]), as if that case had established some new or novel standard. None of the versions cited the 1985 decision (Ownership Attribution Reconsideration) in which the partnership insulation restrictions were first announced, or the other precedent also dating back to 1985 (e.g., Family Media, supra) which clearly applied those restrictions in the comparative context.

179. By Memorandum dated November 17, 1988, Boling transmitted to the other principals of WHCT Management, Inc. a copy of the final November 16 version of the Hayes letter. SBH Exh. 142. In his memo Boling indicated his support for Hayes's

---

[45/] The Stanley decision was released in August, 1988 -- which would have made it a relatively "recent" case with respect to the Hart and Bocchi correspondence in early September, 1988, but much less so with respect to the mid-November, 1988 documents in which that decision was ultimately cited.

recommendation that Ramirez acquire all the stock of WHCT Management, Inc.; he also indicated that he had previously provided WHCT Management, Inc. principals with "appropriate instruments" to effectuate the necessary transactions.

180. By Memorandum dated November 22, 1988, Bacon transmitted to all ACCLP partners a draft "First Amendment" to the ACCLP partnership agreement, one purpose of which was to include in that agreement language "restricting participation by limited partners in the day to day operation of the Partnership's television station." SBH Exh. 62. That document -- which included language closely tracking the Commission-imposed restrictions on limited partnerships -- was executed by all ACCLP partners effective November 21, 1988. See SBH Exh. 64, pp. 2-6.

181. On November 22, 1988, Bocchi filed with the Commission an application (FCC Form 316) for consent to a pro forma transfer of control of ACCLP. SBH Exh. 23. Exhibit 1 to that application set forth "the current ownership structure" of ACCLP; that structure showed, inter alia, that the officers, directors and shareholders of WHCT Management, Inc. were Boling, Sostek, Richard Gibbs, Randall Gibbs, the estate of Joel Gibbs, and Lance. As set forth in Exhibit 2 to that application, the "proposed ownership structure" of ACCLP contemplated, inter alia, that Ramirez would be the sole officer, director or shareholder of WHCT Management, Inc.

182. Ramirez claimed that he was the "driver on the decision" to transfer control of WHCT Management, Inc. from Astroline Company to himself. Tr. 410. However, when asked to

explain how that decision was reached, he was unable to, and his own language contradicted the suggestion that he was solely in control of that decision. Tr. 410-11 ("I cannot specifically recall why we elected to transfer it" [emphasis added]). Further contradicting Ramirez on this point is Boling's November 17, 1988 memo (SBH Exh. 142) in which Boling addressed the issues raised by Hayes's November 16, 1988 letter (SBH Exh. 61).

183. According to Boling's memo, Boling understood the recommendation for transferring control of WHCT Management, Inc. to have come from B&H; Boling discussed the matter with P&B; and, having formed an opinion, Boling informed Ramirez of both that opinion "and my intention to recommend to the [principals] of WHCT Management, Inc., that the recommendation be followed". SBH Exh. 142. Boling also indicated that he had already delivered to each WHCT Management, Inc. principal the paperwork necessary to implement the proposed transfer. Id. According to the organizational documents of WHCT Management, Inc., the shares of that company were transferred on November 15 (two days before Boling's memo), SBH Exh. 63, p. RC007874 (see also Tr. 242), and officers' and directors' resignations appear to have been tendered the same day (or possibly the next day), SBH Exh. 63, pp. RC-007862-65. In other words, contrary to Ramirez's assertion of being the "driver" on this project, the available documents indicate that it was Boling who was the "driver".

184. While the application for consent to those transactions was filed on November 22, 1988, the corporate records of WHCT Management, Inc. establish that certificates for all of the

company's stock were issued to Ramirez on November 15, 1988, see SBH Exh. 63, p. RC7874, and that Ramirez was taking corporate actions as the "sole stockholder" as of November 18, 1988, see SBH Exh. 63, pp. RC7866-7867, 007878, 007881, 007884-87, 007890, 007893; see also Hoffman/TIBS/Ramirez Exh. 6, pp. 366-67 (certificate filed with Secretary of Commonwealth on November 23, 1988, executed by Ramirez as Clerk of WHCT Management, Inc.).

185. In other words, while ACCLP indicated in its November 22, 1988 application that the transactions were subject to prior Commission approval and had therefore not been consummated, in fact they had been consummated a week before the application was filed.

186. The consummation of the proposed restructuring was reported to the Commission in an Ownership Report filed December 7, 1988. Hoffman/TIBS/Ramirez Exh. 2, Attachment D, pp. 121-27. However, according to Bocchi (who filed the November 22, 1988 application, SBH Exh. 23), as of July, 1989 -- nine months after the restructuring was actually implemented and eight months after it was reported to the Commission -- the Commission still "ha[d] yet to process Astroline pro forma request for permission to restructure its partnership interests." SBH Exh. 64.

187. On August 8, 1989, Ramirez wrote to Hayes and Bocchi inquiring about certain strategic considerations relating to ACCLP's ownership structure. In that letter, Ramirez referred to the "critical issue of proper insulation between general and limited partners", and questioned the effect, on ACCLP's

potential comparative situation, of the "failure to achieve" such insulation. SBH Exh. 65. Under cross-examination Ramirez confirmed that he concurred with Bocchi's belief, expressed in her July 5, 1989 letter (SBH Exh. 64), that the November 22, 1988 assignment application had not theretofore been granted. Tr. 369.

188. On July 5, 1989, Bocchi wrote a letter to a Hartford attorney, transmitting to him a copy of the November 21, 1988 "First Amendment" to the December 31, 1985 Amended Partnership Agreement. SBH Exh. 64. In that letter, Bocchi explained that

> [t]he main purpose of this amendment was to restructure the partnership so as to assure that the limited partners would be insulated from the day to day operations of the television station.

CONCLUSIONS OF LAW

I. Preliminary Conclusions

A. Introduction

189. All broadcast applicants and licensees have an absolute duty to be accurate, candid and forthcoming in the information they provide to the Commission. Broadcasters are held to "high standards of punctilio" and must be "scrupulous in providing complete and meaningful information" to the Commission. E.g., Lorain Journal Co. v. FCC, 351 F.2d 824, 830 (D.C. Cir. 1965). The duty of candor requires applicants to be fully forthcoming as to all facts and information that may be decisionally significant to their applications. Swan Creek Communications v. FCC, 39 F.3d 1217, 1222 (D.C. Cir. 1994); RKO General, Inc. v. FCC, 670 F.2d

215, 229 (D.C. Cir. 1981), cert. denied, 456 U.S. 927 and 457 U.S. 1119 (1982).

190. The evidentiary record developed in this proceeding establishes beyond any doubt that ACCLP fell far short of that rigorous standard; indeed, ACCLP aggressively flouted that standard. For years, ACCLP maintained to the Commission and to the Courts that ACCLP was a minority-owned and minority-controlled entity within the meaning of the Commission's policies. But in fact, any legitimacy that that claim might conceivably have had at ACCLP's inception in May, 1984 had long since vanished by mid-1985 -- and yet, for years thereafter ACCLP kept up its charade, withholding inculpatory information from the Commission and the Courts while claiming all the while to be in compliance with the Commission's definition of a minority-owned and controlled limited partnership.

191. From May, 1984 through most of 1990 -- during which period ACCLP's application to acquire Station WHCT-TV pursuant to the Commission's minority distress sale policy was pending -- ACCLP consistently held itself out, to the Commission, to the Court of Appeals, and to the Supreme Court, as a minority-controlled limited partnership within the meaning of the Commission's minority ownership and limited partnership rules and policies. E.g., SBH Exh. 14, pp. 1-3; SBH Exh. 15, pp. 000483-85; SBH Exh. 18, pp. 39-44. But it is clear that, irrespective of whatever instantaneous, evanescent validity that representation may arguably have had as of May-June, 1984 (i.e., as of ACCLP's formation), ACCLP was plainly not in compliance

with the Commission's policies, both de facto and de jure, long before the oral argument before the Court of Appeals in January, 1986, or at any time during the ensuing five years. ACCLP operated itself, and even altered its own partnership structure, not to bring it into compliance, but to move it farther out of compliance.

192. Moreover, the record also clearly establishes that ACCLP knew that it was not in compliance, but nevertheless affirmatively declined to disclose that non-compliance for years, even though ACCLP was all the while taking (before the Commission, the Court of Appeals and the Supreme Court) the strident position that ACCLP was a bona fide minority-owned and controlled limited partnership as defined by the Commission.

B. ACCLP was not a bona fide minority limited partnership.

193. As an initial matter, the record evidence plainly establishes that ACCLP was not a bona fide minority-owned and minority-controlled limited partnership consistent with the Commission's rules and policies governing such partnerships. As specified by the Commission in the 1982 Policy Statement, a limited partnership would qualify for, e.g., the minority distress sale policy as long as a general partner owning more than 20% of the partnership was a minority and that general partner exercised "complete control" over the station's activities. 52 RR2d at 1306, ¶11. That is, in order to qualify for the distress sale treatment, an entity had to be both (a) owned more than 20% by minorities and (b) "complete[ly]

control[led]" by minorities. ACCLP failed both parts of this two-part test.

1. Ramirez did not own an interest in ACCLP sufficient to meet the Commission's standards.

194. In the 1982 Policy Statement, the Commission did not elaborate on exactly what it meant when it required that a minority "own more than 20%" of the limited partnership proposing to purchase a license pursuant to the distress sale policy. However, in June, 1985, the Commission clarified precisely what it meant by "ownership" in the context of limited partnerships: the Commission expressly held that "ownership" of limited partnerships would be calculated based on the actual cash contributions made to the partnership by the partners. Citizenship Requirements of Section 310, 58 RR2d 531 (1985), recon. granted in part and denied in part, 1 FCC2d 12, 61 RR2d 298, (1986). In taking that position, the Commission specifically and expressly rejected the suggestion that "ownership" should be measured in some manner so as to permit consideration of "sweat equity", i.e., claims that a partner's share might be determined by reference to intangible contributions. 61 RR2d at 306-307, ¶17. Therefore, in order to satisfy the "ownership" criterion, Ramirez would have to have contributed more than 20% of ACCLP's capital. [46/]

[46/] SBH anticipates that Ramirez may argue that such treatment (or non-treatment) of "sweat equity" is somehow inconsistent with the goal of increasing minority ownership. But that is not so. The Commission's minority distress sale policy would permit a minority individual to acquire "complete control" of a broadcast

(continued...)

195. As ACCLP was originally structured, Ramirez could arguably claim to have met that standard: of ACCLP's total initial capitalization of $1,000, Ramirez had contributed $210, or 21%. See Footnote 14, supra. That situation, however, was short-lived. By December 31, 1985, ACCLP's contributed capital amounted to almost $10 million, of which Ramirez had contributed only $210, or approximately 0.002% (two one-thousandths of one percent), i.e., considerably less than 20%. See, e.g., SBH Exh. 9, p. 39. By December 31, 1986, limited partners had contributed $18.3 million, while Ramirez's contribution remained at $210, id., leaving him with slightly more than 0.001% (one one-thousandth of one percent) of ACCLP's capital contributions. And by 1987, Ramirez's static $210 capital contribution amounted to somewhat less than 0.001%, as Astroline Company's contribution amounted to approximately $22 million. Hoffman/TIBS/Ramirez Exh. 3, 188 BR at 101.

---

[46]/(...continued)
station for, in effect, a personal investment of slightly more than 20% of the station's price (and, under the distress sale policy, that price would be no more than 75% of the station's fair market value). In other words, if the subject station were worth $10 million, then the distress sale price would be no more than $7.5 million, and the minority individual would have to put up no more than $1.51 million, i.e., more than 20% of the station's value. And that's only if the acquisition were to be financed solely by equity contributions. If loan financing were available, the minority principal's contribution would be substantially less.

Thus, the minority distress sale policy would permit a minority to acquire "complete control" over a $10 million station for a fraction of that amount. That is precisely what the policy was intended to do. There is no indication in any Commission decision that the minority ownership policies were intended to give minority individuals a completely free ride based on nothing more than their race or ethnicity.

196. To be sure, the Commission's announcement of the "capital contribution" definition of "ownership" in the Citizenship Requirements of Section 310 decision was not released until June, 1985, one year after the filing of the ACCLP assignment application. But the majority of non-Ramirez capital contributions were made after that date -- primarily in 1986 and 1987 (by the end of 1987, Astroline Company had made approximately $22 million in capital contributions, while Ramirez's contributions remained static at $210). That is, even if Ramirez's short-fall in ownership percentage as of the announcement of the "capital contribution" standard might somehow arguably be overlooked or "grandfathered", the record demonstrates that that short-fall more than doubled thereafter in 1986-1988. ACCLP cannot legitimately claim that Ramirez "owned" more than 20% of ACCLP after mid-1985.

197. ACCLP itself demonstrated its awareness of the paucity of Ramirez's ownership at least as of 1985. In its 1985-1987 tax returns, ACCLP expressly reported to the Internal Revenue Service that Ramirez's "percentage of ownership" was less than 1%. Ramirez himself acknowledged that his own capital contributions amounted to less than 1% of ACCLP's overall capitalization. Tr. 383-84. And Hoffman, too, has argued repeatedly that the available evidence demonstrates that, "notwithstanding the FCC minority preference guidelines, Ramirez no longer owned 21% of the partnership's equity." SBH Exh. 30, pp. 12-13.

198. During his testimony, Ramirez asserted that, while his capital contributions were dramatically less than 20% of ACCLP's

capital, he nonetheless "owned" more than 20% of the "equity". Tr. 383-85. But that self-serving claim is meaningless for several reasons.

199. First, the Commission itself rejected the notion that, in calculating "ownership" of a limited partnership, any non-capital contribution measure should be used. E.g., Citizenship Requirements of Section 310, supra; Pacific Television, supra. In so doing, the Commission specifically rejected the concept of "sweat equity", which appears to be the basis for Ramirez's claim of "equity ownership". Tr. 223-24.

200. Second, even if "sweat equity" had any relevance to ACCLP's ownership for Commission purposes, the record establishes that at no time did the ACCLP limited partnership agreement provide for any mechanism by which Ramirez (or anyone else, for that matter) could convert intangible "sweat" into actual capital contributions. See SBH Exhs. 2, 9. Thus, the notion of "sweat equity" was in any event irrelevant to the ACCLP structure.

201. Moreover, because the ACCLP partnership never provided for any consideration of "sweat equity" contributions, there is no way to calculate what Ramirez's supposed ownership would have been. That being the case, there is absolutely no way to test the validity of any claimed "ownership" percentage he or ACCLP might suggest.

202. This is illustrated clearly by the fact that Ramirez's claimed interest of 21% was absolutely (and incredibly) constant notwithstanding the vast change in ACCLP's capitalization over the period 1984-1988. That unreal constancy suggests that the

asserted 21% ownership figure was not a real measure at all, but instead nothing more than ACCLP's attempt to satisfy the Commission's standards simply by declaring that ACCLP satisfied those standards. The obvious unreliability of such claims is precisely why the Commission rejected that approach in 1985. See Citizenship Requirements of Licensees, 61 RR2d at 307, ¶17. [47/]

203. But even if Ramirez's claim of "equity ownership" were to be considered, arguendo, valid in any respect, Ramirez still could not legitimately claim to have owned more than 20% of ACCLP. According to Ramirez, his "21% equity" derived from the fact that, if and when ACCLP were to be liquidated, Ramirez would have been entitled to 21% of the proceeds after various expenses were paid off. Tr. 383-84. But the record establishes that the expenses which would have to have been paid off would invariably have left nothing to distribute to Ramirez as his "equity" share.

204. Ramirez's testimony indicated that the highest offer made to ACCLP for Station WHCT-TV was sometime in "early 1987" and amounted to approximately $17 million. Hoffman/TIBS/Ramirez Exh. 2, p. 14; Tr. 268-69. But Ramirez also acknowledged that that offer assumed that ACCLP had a "clean" license which could be sold free and clear, id.; because of the pendency of SBH's appeal at that time, ACCLP did not have such a "clean" license, id., so the $17 million (or so) offer referred to by Ramirez clearly exceeded the value of the station as of that time. That

---

[47/] "Moreover, because partnership share may be a volatile term in a partnership agreement, it is more difficult to ascertain than equity contribution. . . . In addition, the partnership may change the method of computing the share at any time."

is, because of the cloud on ACCLP's license, ACCLP was not in a position to sell that prospective buyer a clean license, which is what that buyer was supposedly willing to pay $17 million for. As a result, any sale of the station by ACCLP to that prospective buyer would have netted considerably less than $17 million.

205. But according to the Bankruptcy Court, by "early 1987" Astroline Company had already invested $22 million in equity into ACCLP, together with an additional $5 million in loans. Hoffman/TIBS/Ramirez Exh. 3, 188 BR at 101; see also supra at ¶¶81-86. So even if ACCLP had managed to convince the buyer to pay $17 million, that amount would still have fallen approximately $5 million short of the amount which would be needed to pay off the loans and then re-pay the capital contributions of Astroline Company. See ¶¶81-86, supra for discussion of the practical unlikelihood that Ramirez would receive any distribution of proceeds from any sale of the station. Since Ramirez would not get his claimed 21% "equity" share until the limited partners' "unrecovered adjusted capital" had been paid back -- together with a "return" on that investment -- it is clear that Ramirez's supposed "equity" share was, as a practical matter, completely illusory.

206. Ramirez's efforts to depict the ACCLP structure as compliant with Commission standards runs directly afoul of the decision in Pacific Television, Inc., 2 FCC Rcd 1101, 62 RR2d 653 (Rev. Bd. 1987). There, a supposedly female-controlled limited partnership claimed preferential comparative credit as a female-owned and controlled entity because the sole general partner, a

woman, was said to own 20% overall equity (representing 100% voting interest), while the white male limited partner was said to own 80% equity interest and zero voting interest. That structure was remarkably similar to ACCLP's claimed structure.

207. But the similarities went further. In Pacific Television, the limited partnership agreement featured a "subordination" agreement pursuant to which the female "general" partner would hold only a 1% equity interest until the limited partner received a "full payout" of his contributed capital. 2 FCC Rcd at 1102, 62 RR2d at 654-656; see also Initial Decision (unreported), FCC 86D-43 (released July 2, 1986) at ¶¶11-14. The supposed 20% partner was accorded only a 1% share in the income, expenses and distributions of the partnership until the limited partner had received repayment of 100% of his contributed capital. This is nearly identical to the arrangement set forth in the December 31, 1985 Amended Partnership Agreement, in which Mr. Ramirez was accorded less than 1% of ACCLP's profits, losses and distributions until ACCLP's limited partners had recouped their capital contributions. [48/]

[48/] The ACCLP agreement is actually more egregious than the Pacific Television situation because, in the latter, it does not appear that the supposedly limited partner required that he be paid anything more than his capital contributions before the supposedly general partner could claim a 20% equity interest. ACCLP's December 31, 1985 Amended Partnership Agreement, by contrast, required that the limited partners receive not only repayment of all capital contributions, but also a reasonable "return" on those contributions. See SBH Exh. 9, p. 7. This distinction is particularly noteworthy because, while the Pacific Television limited partner had contributed only $20,000 (as compared to the general partner's $200), the ACCLP limited partners contributed more than $20,000,000 (as compared to

(continued...)

208. And finally, while the Pacific Television applicant had disclosed its partnership agreement to the Commission, it does not appear that ACCLP did so with respect to the December 31, 1985 Amended Partnership Agreement (which created the 99%/1% allocation).

209. The Review Board had no difficulty rejecting the Pacific Television applicant's purported structure as a "classic sham", 62 R.R.2d at 656, even though the supposed 20% general partner claimed (much as Ramirez now does) that she really did understand that she "owned a 20% interest in the equity, and believed that the 20 percent representation showed the 'true nature' of the ownership". [49/]

210. Nor was the Review Board's decision in Pacific Television an aberration. To the contrary, it reflected the consistent policy of the Commission to analyze purported limited partnerships carefully to determine whether they do in fact comport with the Commission's clearly stated policies relative to such partnerships. See also, e.g., Praise Broadcasting Network,

---

[48/](...continued)
Ramirez's $210). In other words, the amount of "return" to which the ACCLP limited partners would presumably have laid claim would have exceeded many times over the amounts of money at issue in Pacific Television.

[49/] Indeed, the Board went further to remark that the applicant's initial failure to promptly advise the Commission of the "subordination" provision "raises candor questions" which would prevent a finding that the applicant was basically qualified. Id. Here, it appears that ACCLP never (promptly or otherwise) disclosed to the Commission or the courts the subordination provision of its partnership agreement, despite the fact that that provision was effective even before oral argument before the Court of Appeals in January, 1986.

Inc., 8 FCC Rcd 5457, 5459, n.4 (Rev. Bd. 1993), where the Review Board found the bona fides of a limited partnership in question where, inter alia, a supposedly controlling general partner supposedly holding a 20% equity interest in the overall limited partnership would receive only 5% of the partnership's profits and losses until the limited partner's capital contribution was repaid with interest. [50/]

211. Because Ramirez could not, at least from early to mid-1985 on, legitimately claim that he owned more than 20% of ACCLP, it is clear that ACCLP did not satisfy that ownership element of the Commission's threshold standards for the minority distress sale policy.

2. Ramirez did not have "complete control" of ACCLP as required by Commission criteria.

212. ACCLP failed the second element of the threshold standard as well. The Commission has consistently required that, in order to qualify as a minority-controlled entity within the meaning of the minority distress sale policy, that entity must be subject to the "complete control" of a minority owner. See, e.g., 1982 Policy Statement. That concept is relatively clear on

---

[50/] See also, e.g., Saltaire Communications, Inc., 8 FCC Rcd 6284 (1993) (in corporate setting, where supposedly passive investors' "rights to earnings and assets leave the voting stockholder with little of value to offer as an inducement for capital contributions from new investors", the "passive" investors had power to influence the applicant's affairs); Atlantic City Community Broadcasting, Inc., 8 FCC Rcd at 4520-21 (limited partnership not bona fide where consent of limited partners is required with respect to any and all borrowing; here, the ACCLP agreement (at Section 4.2) required limited partner consent before the general partner could mortgage or pledge the partnership's assets).

its face: "complete control" means "complete control". But to avoid any potential for confusion, the Commission, in June, 1985, offered further clarification of just what it meant by the "complete control" standard. With respect to limited partnerships, the Commission explicitly and expressly held that, in order to assure that "complete control" would rest in the hands of the nominal general partner, limited partners would be prohibited from having any material involvement at all in the partnership's day-to-day media activities. Ownership Attribution Reconsideration. Driving that point home even more forcefully, the Commission also prohibited limited partners from communicating with general partners about those media activities. Id.

213. Even more tellingly, the Commission held that these prohibitions would have to be expressly included in the partnership agreement in order to assure that the supposed limited partnership was in fact a bona fide limited partnership for the Commission's regulatory purposes. Id.

214. The history of ACCLP's operation unquestionably establishes that ACCLP could not, at any time, claim to satisfy the insulation requirements imposed by the Commission. As originally structured, ACCLP was set up so that Boling, Sostek and others were principals of both a limited partner (Astroline Company) and a general partner (WHCT Management, Inc.). In other words, ACCLP's structure in and of itself violated the insulation requirements.

215. It is true that ACCLP was originally formed in May,

1984, approximately one year before the release of Ownership Attribution Reconsideration. But even as of May, 1984, the announced standard required that "complete control" reside with the general partner. As the Commission subsequently made very clear, it intended the term "complete control" to be read literally, so the initial ACCLP structure (by which Astroline Company, as the owner of WHCT Management, Inc., an ACCLP general partner, might claim the right to involve itself in the control of ACCLP) was already contrary to the Commission's policy from its inception.

216. But even if the concept of "complete control" may have, arguendo, been subject to some misinterpretation as of May, 1984, it is clear that no such misinterpretation was possible after the release of Ownership Attribution Reconsideration in June, 1985. [51/] The ACCLP partnership agreement was substantially revised and re-executed in February-March, 1986 -- more than

---

[51/] The notion that ACCLP may conceivably be entitled to the benefit of any doubt which might arise from the fact that it was originally formed prior to the issuance of Ownership Attribution Reconsideration runs counter to the Commission's precedent. In multiple decisions the standard discussed in Ownership Attribution Reconsideration was applied to partnerships formed prior to the June, 1985 release of that decision. For example, in its October, 1985 decision in Family Media, Inc., supra, the Review Board invoked the Ownership Attribution Reconsideration in its review of an application filed in 1983. The same occurred in Religious Broadcasting Network, 3 FCC Rcd 4085 (Rev. Bd. 1988), where applications filed in 1983 were held to the standard discussed in, inter alia, Ownership Attribution Reconsideration. Accordingly, regardless of when ACCLP was originally formed, it was required to satisfy those same standards. The fact that, after the release of Ownership Attribution Reconsideration, ACCLP revised its structure substantially and still did not attempt to bring itself into compliance with the applicable standards underscores the extent of ACCLP's misconduct here.

seven months after the Commission's unequivocal announcement of its insulation standards in June, 1985. Whatever claims of "grandfathering" ACCLP might have attempted to make based on its May, 1984 original formation date completely evaporated when ACCLP chose, in effect, to re-form itself almost two years later.

217. By the same token, the de facto operation of ACCLP at all times from 1984 through 1988 demonstrates that ACCLP's limited partners could never claim any level of insulation from the partnership's day-to-day activities. Most obviously, ACCLP's checkbook was at all times controlled by Astroline Company representatives in Boston. In order to get a check for anything -- even office supplies -- Ramirez had to convince the limited partners to authorize the issuance of a check for such expenses. [52/] See, e.g., SBH Exh. 9, p. 39; SBH Exh. 45. This

---

[52/] In describing his relation to Boling and Sostek, Ramirez indicated that Astroline Company had been willing to establish an automatic funding mechanism for payroll, pursuant to which Astroline Company made funds automatically available to ADP, a commercial payroll service, to pay ACCLP employees. Tr. 414. That service apparently operated without further input from Hartford: that is, Astroline Company simply directed the payroll fund straight to ADP, which handled the payroll process. But all other expenses -- "anything else", in Ramirez's words -- required some form of review by Astroline Company. According to Ramirez,

> [Astroline Company's] preference for funding the business was not to put big blocks of cash at our access at any one time. . . .
>
> . . .
>
> [T]hey were gentlemen who came from, you know, a cash and carry -- you know, they grew up in the petroleum retailing business. They're a peculiar nature. They wanted to see where the investments were going.

Tr. 415. Oddly, Ramirez testified that, even as of April, 1986 -- after the execution of the December 31, 1985 Amended

(continued...)

is the very opposite of insulation.

218. In Gloria Bell Byrd, 7 FCC Rcd 7976 (Rev. Bd. 1992), aff'd, 8 FCC Rcd 7126 (1993), the mere authority to sign a limited partnership's checks -- whether or not that authority was ever exercised -- was deemed to undermine the bona fides of a claimed limited partnership. Here, the record demonstrates that the owners of ACCLP's limited partner not only had check-signing authority, but they did in fact sign checks; indeed, ACCLP's checkbook was physically maintained ***not*** by Ramirez in Hartford, but by employees of the limited partner in that partner's Massachusetts offices. And even when Ramirez himself did sign checks (all of which were invariably prepared in Astroline Company offices by Astroline Company employees), those checks were prepared only after limited partners had authorized sufficient funding for the expenses to which those checks were directed. Tr. 415. ACCLP's cash management system -- a system maintained, from 1985-1988, because Astroline Company preferred it -- was dramatically inconsistent with the Commission's requirements that limited partners be insulated from media activities and that general partners have "complete control" of the partnership.

219. Additionally, contrary to the prohibition against communications between general and limited partners, Ramirez

---

[52/](...continued)
Partnership Agreement in which the limited partners committed to provide some $10 million additional in capital contributions, see SBH Exh. 9, p. 39 -- Ramirez did not believe that they were obligated to provide more than the $500,000 originally committed under the 1984 partnership agreement. Tr. 272-73; 326.

consulted regularly -- at least twice monthly, if not weekly -- with Boling and Sostek. Tr. 298-99. The documentary evidence establishes that Boling and Sostek were involved in decisions concerning the station's programming, its physical plant, its political contributions, the payment of its routine expenses -- in effect, everything. See ¶¶108-140, supra. Again, this level of involvement in the day-to-day activities of the partnership is precisely the opposite of the insulation required by the Commission.

220. Ramirez's own ability to exercise any level of control over ACCLP was further limited by the fact that, under the December 31, 1985 Amended Partnership Agreement, Ramirez could not, without the consent of the limited partners, sell his own interest in ACCLP, borrow money against that interest, or sell or borrow money against the station. See SBH Exh. 9, pp. 12 (Section 4.2 of ACCLP partnership agreement), 18 (Section 6.1(B) of ACCLP partnership agreement). Such limitations on a supposedly general partner's authority have been held to undermine the bona fides of the supposed limited partnership structure. See Atlantic City Community Broadcasting, Inc., 8 FCC Rcd 4520 (1993). On that basis, too, ACCLP cannot be deemed to have been a valid limited partnership as that term has been defined by the Commission.

221. Additionally, there is substantial record evidence indicating that Astroline Company and/or two of its principals (Boling and Sostek) involved themselves in the station's day-to-day activities without Ramirez's involvement. They conferred

with Hart, they corresponded with Hart, and there is even evidence that, in August, 1988, Boling advised Hart not to permit B&H attorneys to communicate with Ramirez. See ¶¶139-140, supra.

222. This level of involvement is not surprising. When they first formed ACCLP, Boling, Sostek and Astroline Company intended to invest no more than approximately $500,000 of their own money -- the rest to be obtained from loan financing. See, e.g., ¶46, supra. But by 1985, they realized no loan financing was available, and they accordingly decided to put millions of their own funds at risk. Under these circumstances, it is completely understandable that persons advancing millions would expect to have more than a little control over their investment, particularly when the supposedly controlling general partner was a complete stranger to them (except for a two-hour meeting) who had no previous experience as a general manager or a station owner and whose total personal investment amounted to $210.

223. Accordingly, ACCLP did not comply with either of the two criteria established by the Commission for limited partnerships. Nevertheless, ACCLP never altered, amended or revised its repeated claims to the Commission and the Courts concerning its supposed compliance with those criteria.

C. ACCLP knew that it was not in compliance with the Commission's criteria.

224. The evidence of record (both direct and circumstantial) plainly establishes that ACCLP knew that it was not in compliance with the Commission's limited partnership criteria.

225. Among the most obvious indications of ACCLP's knowledge

are the documents generated in connection with the aborted preparation of the August 3, 1987 Ownership Report. Those documents clearly demonstrate that ACCLP and its counsel recognized that ACCLP could not accurately claim that the limited partners of ACCLP were insulated from the media activities of ACCLP as required by the Commission. The instructions to the Ownership Report itself spelled out in detail the insulation requirements. SBH Exh. 74, p. 3. Those instructions were sent to Ramirez by B&H, SBH Exh. 74. Moreover, Paragraph 5 of the Ownership Report form itself required the respondent to address precisely the question of insulation.

226. And ACCLP clearly focussed on precisely that question in the initial preparation of its Ownership Report. Harburg's July 20, 1987 draft, which was executed by Ramirez, was prepared with a "no" certification in Paragraph 5, meaning that ACCLP was not properly insulated. SBH Exh. 82. That draft includes typed-in language explaining that negative certification -- Astroline Company was the owner of general partner WHCT Management, Inc. Id. But that explanatory language was crossed-out by hand in that draft, indicating even more conclusively that the matter had been specifically focussed on in the preparation of the draft.

227. Dudley's memo, dated July 24, 1987, further establishes that the question of insulation was addressed in the preparation of the draft. Indeed, Dudley squarely presented the question:

> [C]an Astroline Company validly issue the certification of non-involvement in view of the substantial number of interlocking officers and directors with WHCT Management and the fact that it owns 100% of the stock of WHCT Management?

SBH Exh. 83, p. 3.

228. Then there is Harburg's later draft, sent to Ramirez on July 29, 1987, which included a "yes" certification in Paragraph 5, but was accompanied by a "Certification" page which read, in part:

> Astroline Communications Company, Ltd. Partners [sic] certifies that no limited partner other than Astroline Company will be actively involved in the media activities of [ACCLP].

SBH Exh. 86, p. BH0848. This "Certification" constituted an admission that, in fact, ACCLP was not insulated as required by Commission policies.

229. Then there is a further draft, also executed by Ramirez and bearing a July 31, 1987 date, in which the response to Paragraph 5 is again "no", meaning that ACCLP was acknowledging that it was not properly insulated. SBH Exh. 91. A version of that draft was circulated by Harburg to Hart and Bacon on July 31, 1987, and there is no evidence that either of them perceived the "no" response to be inaccurate.

230. It is therefore clear that, at least as of mid-1987, ACCLP was well aware that its limited partners were not properly insulated from the partnership's media activities, as required by the Commission.

231. From mid-1987 through October, 1988, the structure of ACCLP did not change. On September 7, 1988, Hart wrote to Ramirez that there was certain

> specified "preferred" language which the Commission recognizes as evidence of the insulation of media partners from the management or operation of the media-related activities of the partnership.

SBH Exh. 96. [53/] In light of that insulation requirement, Hart

---

[53/] In his letter, Hart suggested that that "specific 'preferred' language" had been announced in some unspecified "[r]ecent Commission precedent". SBH Exh. 96. This appears to be a bald, disingenuous attempt by Hart to pretend that the insulation requirements had been imposed only recently. But those requirements had been in place since June, 1985, see Ownership Attribution Reconsideration; had been communicated directly to B&H and Ramirez in the instructions to the Ownership Report Form which were sent by B&H to Ramirez in March, 1987, SBH Exh. 74; and had apparently been the focus of discussion in connection with the aborted draft Ownership Report in July, 1987. Moreover, Hart himself testified that, as an experienced communications attorney, he was personally familiar with the development of the Commission's limited partnership policies since 1984, Tr. 583-84.

Hart's direct, personal familiarity with these Ownership Attribution Reconsideration standards, and their applicability to evaluation of limited partnerships seeking credit under the Commission's minority ownership policies, is a matter of Commission record. For example, in Religious Broadcasting Network, 3 FCC Rcd 4085, 4091-92 (Rev. Bd. 1988), the Review Board affirmed a 1987 Initial Decision in which one applicant (whose application was filed in 1983) -- A & R Broadcasting Company ("A & R") -- was a limited partnership in which one limited partner was supposedly also a general partner. The Review Board rejected the notion that A & R was entitled to be treated as a bona fide limited partnership, stating that

> while [the Commission] will ordinarily accept the premise that 'limited' partners are purely passive investors who take no part whatsoever in company management, any management-type activities evidenced by such principals negates the efficacy of the claim of 'limited' partner status.

3 FCC Rcd at 4092, ¶20. As indicated in the "Appearances" listing at the beginning of that decision, Hart represented A & R in that proceeding -- meaning that he was more than just generally familiar with the Commission's standards and their applicability to claims of minority ownership. See also Catherine Juanita Henry, 3 FCC Rcd 1492 (ALJ 1988) (Initial Decision disposing of competing applications filed in 1983-1984; in raising questions concerning bona fides of an applicant represented by Hart (HG Communications), ALJ cites, inter alia, Pacific Television, supra).

In light of all of these facts, Hart's suggestion in his September 7, 1988 letter that the insulation requirement was a "recent" development is nothing more than an apparent effort to create a misleading revisionist document.

then stated that

> [i]t is imperative that we amend the [ACCLP] partnership agreement so that it accords with recent case law.

Id. This is yet another conclusive illustration that ACCLP was well aware that its structure -- which had not changed since the December 31, 1985 Amended Partnership Agreement -- did not comport with the Commission's policies. [54/]

232. Further demonstrations of ACCLP's awareness of its non-compliance with Commission standards appear in SBH Exhs. 58-61. Those exhibits consist of three apparent drafts and a final version of a letter from B&H to ACCLP concerning the need to reorganize itself to bring itself into compliance with the Commission's insulation standards. In the first version of the

---

[54/] The express import of the Hart letter (SBH Exh. 97) is mirrored implicitly in two contemporaneous documents. The first is a draft Form 316/Transfer of Control application prepared by Bocchi and sent to Ramirez on September 8, 1988, the day after the Hart letter (SBH Exh. 96). That draft application was intended to effectuate the retirement of WHCT Management, Inc. from its general partner role, an action which would have addressed at least one of the more obvious defects in the ACCLP structure. According to Bocchi's cover letter, it was "imperative" that the form be returned as soon as possible. Both Boling and Ramirez executed the form (SBH Exh. 97, p. 2), but it does not appear to have been returned to B&H or filed with the Commission.

The second document is a draft Ownership Report, prepared by Bocchi and sent by her to Bacon on September 12, 1988. As drafted, that Report indicated that the only general partner was Ramirez and the only limited partner was Planell; that draft Report also indicated, in response to Paragraph 5, that ACCLP was properly insulated. This draft does not appear to have been executed or filed with the Commission.

These two documents reflect the message of Hart's September 7, 1988 letter: that is, that ACCLP was plainly not in compliance with the Commission's standards governing limited partnerships, and that steps would have to be taken to bring it into compliance.

document (SBH Exh. 58), the specific insulation standards are set forth clearly, with emphasis repeatedly added. It includes a paragraph which

> stress[es] the importance of maintaining a strict separation between limited partners and general partners. General partners should be in complete control of the organization, and limited partners must be passive, non-voting equity holders. No partners should hold dual roles as limited and general partners.

SBH Exh. 58, p. 3 (emphasis in original).

233. While the second version of the document (SBH Exh. 59) is briefer and more circumspect that the first, it still clearly reflects the awareness that ACCLP was not in compliance with the structural requirements for limited partnerships. [55/] For example, it mentions repeatedly that partners in ACCLP operated in or exercised "dual roles" as both general and limited partners.

234. The third version of the document (SBH Exh. 60) is simply the second version with hand-written notations from Lance. None of Lance's notations undermine or otherwise alter the clear import of the text, i.e., that ACCLP was not in compliance with

---

[55/] The second version of the document, SBH Exh. 59, includes additional clearly disingenuous statements similar to those included in Hart's September 7, 1988 letter to Ramirez (SBH Exh. 96). See Footnote 53, above. SBH Exh. 59 refers to "recent decisions by the Commission" which "necessitate changes in the basic structure" of ACCLP. But again, the Commission's standards governing limited partnerships had been in place since June, 1985 (at the latest), and B&H attorneys had specifically focussed on those standards no later than July, 1987 in connection with the aborted preparation of the August 3, 1987 Ownership Report. So any attempt to characterize the insulation standards as being of "recent" vintage in November, 1988 is at best disingenuous, if not affirmatively misleading.

the Commission's structural requirements. [56/]

235. The fourth and final version of the document (SBH Exh. 61) contains essentially the same admission, i.e., that there was an overlap between general and limited partners and that the ACCLP should be modified substantially to bring it into compliance with the Commission's standards. [57/]

236. The steps then taken by ACCLP further confirm the infirmities of its structure. By amendment of the December 31, 1985 Amended Partnership Agreement, SBH Exh. 62, ACCLP sought to add into that agreement language restricting participation by limited partners in the day-to-day activities of ACCLP, i.e., the language which the Commission had held, in June, 1985, to be necessary for limited partnerships, see Ownership Attribution Reconsideration. Of course, the fact that that language had to

---

[56/] Lance's notations do add their own disingenuous spin on the B&H draft. Where B&H stated that the Commission's decisions "necessitate certain changes in the basic structure" of ACCLP, Lance proposed that "necessitate" be amended to "make advisable". The record does not indicate why Lance, who was not a communications attorney, felt qualified to contradict B&H, ACCLP's long-time communications law firm, on this point of Commission law. Lance also proposed the deletion of language admitting that "certain partners [of ACCLP] exercise dual roles as limited and general partners". SBH Exh. 60, p. 2.

[57/] As did the earlier versions, this last version also includes a number of plainly self-serving, disingenuous and inaccurate statements concerning ACCLP's structure and operation. Since B&H was well aware of ACCLP's structure and historical operation -- indeed, Hart, a B&H attorney, had himself been a general partner of ACCLP from 1985-1987 -- the inclusion of these misleading statements in this letter raises questions concerning the purpose for which the letter was intended. That is, it appears that it was expected that the letter would be made public in some manner and that an effort was made to couch the damning admissions in the most benign possible setting, even if doing so required substantial distortion of the truth.

be inserted into the agreement in November, 1988 merely reaffirms the obvious fact that that language had not previously been included in the agreement.

237. Further confirmation of just what was going on in this September-November, 1988 period is found in SBH Exh. 64, a letter from Bocchi to ACCLP's bankruptcy counsel in July, 1989. In that letter, Bocchi referred to the November, 1988 amendment to the December 31, 1985 Amended Partnership Agreement and explained:

> The main purpose of this amendment was to restructure the partnership so as to assure that the limited partners would be insulated from the day to day operations of the television station. Insulation of the limited partners is essential to the protection of [ACCLP's] minority preferences.

SBH Exh. 64. Similarly, in an August 8, 1989 letter to Bocchi and Hayes, Ramirez referred to the "critical issue of insulation between general and limited partners". SBH Exh. 65.

238. There is, therefore, overwhelming, uncontradicted, documentary evidence clearly establishing that ACCLP was well aware of the fact that it was not in compliance with the Commission's insulation requirements relative to limited partnerships beginning at the latest in mid-1987 and continuing thereafter.

239. There is also circumstantial evidence indicating that ACCLP was aware of that problem significantly before mid-1987. In particular, ACCLP's failure to submit a copy of its December 31, 1985 Amended Partnership Agreement suggests that ACCLP recognized as early as 1986 (i.e., when that amended agreement was executed) that that agreement fell far short of the

Commission's standards. After all, up to that point ACCLP had been reasonably diligent in complying with the Commission's filing requirements. ACCLP filed it first Ownership Report (SBH Exh. 16), complete with a copy of the original ACCLP partnership agreement, with the Commission within 30 days of the consummation of the acquisition of Station WHCT-TV, as required by Section 73.3615. At Bacon's suggestion, a further report supposedly clarifying that initial report was filed in May, 1985. SBH Exh. 17. ACCLP filed an amended Ownership Report in September, 1985, within 30 days of the transfer of certain partnership interests and the consequent introduction of new partners into ACCLP. SBH Exh. 19. And, again, ACCLP filed a supplement to that amended report in October, 1985 to assure that copies of relevant agreements were included in the Commission's files. SBH Exh. 20.

240. In view of that track record, and in view of the fact that at least two law firms -- P&B and B&H -- had demonstrated substantial familiarity with the Commission's rules concerning the filing of ownership-related information [58/], it is striking

---

[58/] B&H, as ACCLP's communications counsel, may be expected to have been the more familiar with those filing requirements, and the evidence does indicate that B&H provided timely advice about those requirements. E.g., SBH Exh. 74. While P&B was supposedly not providing regulatory advice, the record demonstrates that both Lance and Bacon were familiar with, and sensitive to, the Commission's rules in this area. See SBH Exh. 39, p. 7 (in May, 1985 memo, Lance demonstrates awareness of need to file ownership-related documents with Commission); SBH Exh. 37, p. 4 (in February, 1985 letter, Bacon refers to need to alert Commission of changes in ownership); SBH Exh. 68 (Bacon raises questions concerning the February, 1985 ACCLP Ownership Report, suggests that the relevant regulations "should be carefully

(continued...)

that ACCLP did not file the December 31, 1985 Amended Partnership Agreement.

241. While Ramirez attempted to patch this hole over by claiming that he thought ACCLP had filed a copy of the December 31, 1985 Amended Partnership Agreement, his vague and unsupported [59/] testimony is unpersuasive, particularly in the face of the substantial documentary evidence indicating that ACCLP did not in fact file the agreement.

242. In view of the foregoing, there can be no question that, no later than mid-1987 and probably a year or more earlier, ACCLP was clearly aware of the fact that its structure was not in compliance with the Commission's criteria for limited partnerships.

D. ACCLP intentionally failed to advise the Commission or the Courts concerning its lack of compliance with the Commission's limited partnership criteria.

243. During the period May, 1984 - June, 1990, ACCLP consistently held itself out to the Commission and the Courts as being in compliance with the Commission's minority ownership policies. See, e.g., SBH Exh. 14, SBH Exh. 15, SBH Exh. 18. The Commission and the Supreme Court both acted in reliance on

---

[58/](...continued)
reviewed" and, after such review, an amended report filed "after it has been reviewed by everyone concerned"; such an amended report was filed in May, 1985).

[59/] As discussed above at ¶¶100-104, above, the only two documents Ramirez referred to in this regard tended to show that, contrary to Ramirez's self-serving claim, ACCLP did not file a copy of the December 31, 1985 Amended Partnership Agreement with the Commission.

ACCLP's claims.

244. The record establishes that, despite its lack of compliance with the limited partnership criteria, and despite its awareness of that non-compliance, ACCLP failed to advise the Commission or the Courts about that non-compliance. ACCLP did not file any copy of the December 31, 1985 Amended Partnership Agreement, nor did ACCLP alert either the Commission or the Courts to the terms of that agreement (including, e.g., the reallocation of profits and losses or the revision of distribution rights which effectively negated any claim Ramirez might have made to a 21% ownership interest); nor did ACCLP advise either the Commission or the Courts as the capital contributions of ACCLP's limited partners skyrocketed from the initial $800 (as reflected in ACCLP's original 1984 partnership agreement, SBH Exh. 2, p. 29) to somewhere north of $22 million; nor did ACCLP advise either the Commission or the Courts of the manner in which ACCLP's day-to-day activities were being conducted [60]; nor did ACCLP advise either the Commission or the Courts that Ramirez communicated regularly (at least every other week, perhaps more often) with Boling and Sostek relative to virtually all aspects of ACCLP's activities.

245. The ultimate question presented by the issues in this case is whether, in failing to alert the Commission and the

---

[60] In particular, there is no evidence that ACCLP at any time advised the Commission or the Courts that Ramirez did not even have a checkbook in Hartford, or that all the station's operating revenues were automatically "swept", twice a week, into an account in Boston for the convenience of Astroline Company.

Courts to its non-compliance and, instead, in leaving unchanged its claims to compliance with the minority ownership policies, ACCLP engaged in misrepresentation. Misrepresentation requires, as an essential element, an intent on the part of the accused party to mislead. Such intent can be inferred from the relevant facts and circumstances. E.g., David Ortiz Radio Corp. v. FCC, 941 F.2d 1253, 1260 (D.C. Cir. 1991). [61/]

246. The record evidence plainly establishes that ACCLP's failure to alert the Commission and the Courts to its non-compliance, and its willingness instead to leave its contrary (and inaccurate) assertions of compliance in place, were calculated and willful conduct by ACCLP designed to prevent disclosure and thus avoid the consequences of its non-compliance.

247. The record demonstrates that even before ACCLP adopted its December 31, 1985 Amended Partnership Agreement, ACCLP and its advisors were concerned about having to disclose ownership information to the Commission, primarily because such disclosure would make the information available to SBH. In February, 1985 -- barely a month after ACCLP first acquired the station -- Bacon expressed to Ramirez (with copies to Boling, Sostek and Hart) concern about making any changes in the partnership which might require disclosure to the Commission because such disclosure would "probably be seen by the Shurberg interests". SBH Exh. 37,

---

[61/] As a practical matter, intent must almost always be inferred to some degree. As former Administrative Law Judge Walter Miller opined, "no applicant in his right mind is going to take the stand and openly admit" an intentional violation of Commission rules or policies. Guy S. Erway, 90 FCC2d 755, 775 (ALJ 1980).

p. 4.

248. Three months later, in May, 1985, Lance expressed nearly identical concerns. In a memo to, inter alia, Ramirez, Boling, Sostek and Hart, Lance summarized the meeting at which potential changes to the ACCLP structure were discussed at some length. SBH Exh. 39. The changes so discussed were ultimately adopted in the December 31, 1985 Amended Partnership Agreement. In his memo, Lance referred to "the notices and other documents to be filed with the Federal Communications Commission to reflect the changes in the ownership of [ACCLP] involved." SBH Exh. 39, p. 7. In other words, Lance (as well as the other meeting participants, including Ramirez, Boling, Sostek and Hart) knew that the changes involved would require disclosure to the Commission.

249. But, according to Lance, such disclosure would be withheld until after SBH final pleading opportunity in the then-pending briefing cycle in the Court of Appeals:

> All documents will be executed and all filings will be made with the Federal Communications Commission immediately following the filing of a Reply Brief by Shurberg Broadcasting of Hartford with the United States Court of Appeals for the District of Columbia in the matter of Shurberg Broadcasting v. FCC or the expiration of the time for the filing of any such brief, estimated to be on or about June 20, 1985.

SBH Exh. 39, p. 7. ACCLP could, of course, have decided to implement any restructuring according to any schedule which ACCLP may have deemed suitable to its purposes. But Lance's memo indicates that the governing consideration in determining that schedule would be not anything to do with ACCLP's convenience,

but rather the timing of SBH's final brief in the then pending briefing cycle. The most obvious conclusion to be drawn from this is that ACCLP did not want to have to make any disclosure at a time when SBH could learn of the disclosure and inform the Court in a brief which SBH was entitled to file as a matter of right.

250. ACCLP had reason to be concerned. Its claim of being a minority-owned/minority-controlled entitled was absolutely essential to the viability of its efforts to acquire Station WHCT-TV. If ACCLP were shown to be ineligible for the minority distress sale policy, then its distress sale assignment application would have to have been rejected. To make matters worse, ACCLP had chosen, in January, 1985, to consummate its acquisition before the grant of its distress sale assignment application became final. Because of that voluntary election, ACCLP ended up investing tens of millions of dollars in the station, all of which would have been lost -- probably irretrievably -- had the grant of the distress sale assignment application been reversed. Under these circumstances, ACCLP had a huge motive to keep the truth about its ownership structure and operating procedures from the Commission and the reviewing courts. Even Ramirez acknowledged that ACCLP was "trying to insure and maximize [its] opportunity to retain the license that we had invested so much in." Tr. 371,

251. As it turned out, the various structural changes discussed in the May, 1985 meeting (and described in Lance's memo, SBH Exh. 39) were not implemented until early 1986, with an

effective date of December 31, 1985. From Lance's memo, it is clear that ACCLP was aware of the necessity of filing the resulting December 31, 1985 Amended Partnership Agreement. [62/] And any concern that ACCLP might have had about SBH learning of the changes in time to include some reference to them in its reply brief had long since passed. And yet ACCLP still did not file the December 31, 1985 Amended Partnership Agreement with the Commission.

252. In view of the care which ACCLP, along with its dual counsel, P&B and B&H, had taken to update previous ownership changes, ACCLP's failure cannot have been the result of mere inadvertent oversight. This is especially so in view of the fact that attention was clearly being paid to compliance with other aspects of the Commission's rules relative to the new partnership agreement. See SBH Exh. 53 (letter from Bacon transmitting a copy of the December 31, 1985 Amended Partnership Agreement to the station for placement in the station's local public inspection file).

253. Of course, since the May, 1985 meetings at which re-structuring of ACCLP was discussed by the ACCLP principals, a number of decisions had been issued by the Commission establishing beyond doubt that the ACCLP could not legitimately claim to be a minority-owned or -controlled limited partnership. E.g., Ownership Attribution Reconsideration; Family Media, Inc.

[62/] It may also be observed that Bacon, although not a communications attorney, was aware that a copy of the December 31, 1985 Amended Partnership Agreement had to be placed in the station's local public inspection file. SBH Exh. 53.

Hart, who was himself a general partner in ACCLP during this period (i.e., mid-1985 to early 1987), was aware of these developments in Commission policy. Tr. 583-84. See also Footnote 17, supra. Thus, in 1986 ACCLP had even more reason to be reluctant to file the December 31, 1985 Amended Partnership Agreement.

254. But even if ACCLP's failure to submit that Agreement was inadvertent in 1986, the same cannot be said of 1987. The record herein clearly establishes that ACCLP was required to file a full Ownership Report on August 3, 1987, providing inter alia copies of documents such as the December 31, 1985 Amended Partnership Agreement and a certification as to whether the partnership included the insulation provisions mandated by the Commission. E.g., SBH Exh. 74. The record also establishes that ACCLP initially took steps to assure that such a report would be filed: the matter was turned over to a team of "experts" within B&H with substantial experience in preparing ownership reports. Tr. 554, 588-89.

255. But no such report was filed. Instead, Hart filed a letter which did not contain any reference at all to the December 31, 1985 Amended Partnership Agreement and which did not contain any information at all concerning ACCLP's compliance with the Commission's insulation requirements.

256. Despite multiple opportunities, neither Hart, nor Ramirez, nor Bacon was able or willing to provide any credible explanation as to why ACCLP elected to file a letter, rather than a full report, even though the uncontroverted evidence indicates

that all three participated in the decision to file the letter. See, e.g., ¶166, supra.

257. The record shows that ACCLP could have filed a full report -- Ramirez had executed two separate versions of the draft report in advance of the August 3, 1987 deadline, SBH Exhs. 82 and 91; Tr. 618 (Hart testifies that "we could have filed an ownership report on the form at that time").

258. Significantly, in none of the several drafts of the Ownership Report which are in the record -- including a draft provided by Harburg to Hart and Bacon on July 31, 1987 -- is there any reference at all to the December 31, 1985 Amended Partnership Agreement. See SBH Exhs. 82, 84, 86, 87, 91. The drafts all include listings of at least some agreements, including the original 1984 partnership agreement, but none refers at all in any way to the December 31, 1985 Amended Partnership Agreement.

259. This is particularly noteworthy because, in the preparation of the draft report, both Harburg and Dudley had indicated questions about whether such an agreement existed, SBH Exh. 83; moreover, Harburg had discussed the matter with Bacon, as a result of which, on July 28, 1987, Bacon had sent a copy of that agreement to Harburg ("c/o Thomas A. Hart, Jr.") by Federal Express, SBH Exh. 85. So as of July 28, 1987 the B&H ownership report experts were aware of the existence of the December 31, 1985 Amended Partnership Agreement, and they presumably knew that ACCLP was required to file a copy of that agreement, and they apparently had a copy of the agreement in hand from Bacon as of

approximately July 29, 1987.

260. And yet, none of the draft reports contained any reference to the agreement. That cannot be attributed to mere oversight.

261. And then there is the matter of the explanation offered to the Commission as to why ACCLP filed Hart's letter in lieu of an Ownership Report. According to Hart's letter, ACCLP was

> currently in the process of resolving a number of matters that have arisen as a result of the recent Court of Appeals Order in Shurberg v. FCC, No. 84-1600 (D.C. Cir., June 25, 1987) (remanding case to FCC); the death of Joel A. Gibbs, one of the Limited Partners of Astroline Company; and an internal reorganization.

SBH Exh. 21. But the Court of Appeals Order mentioned by Hart had nothing whatsoever to do with ACCLP's ownership (see SBH Exh. 90). And, while Hart attempted in his testimony to suggest that the death of Joel Gibbs had been "recent", Tr. 608, the fact is that Mr. Gibbs had died in May, 1986, a year and three months earlier, Tr. 615. And finally, Hart confirmed that no reorganization of ACCLP had occurred at that time or subsequently, Tr. 627-29.

262. An Ownership Report is, in effect, a "snapshot" of certain information relative to the licensee as of a particular point in time. While Hart's letter seemed to advise the Commission that ACCLP could not provide such a "snapshot" as of August 3, 1987, the fact is that, by listing the various "owners" of ACCLP in that letter, Hart put the lie to his own approach. While Hart tried to suggest that various factors prevented the

completion of a full Ownership Report, the fact is that, notwithstanding those supposed impediments, he was nonetheless able to submit some information -- so there does not appear to have been any real impediment. The significant difference, though, is that by filing his letter, Hart managed to crop the snapshot so as not to provide any reference to limited partner insulation or the December 31, 1985 Amended Partnership Agreement.

263. In other words, while Hart seemed in his letter to be offering reasons why no Ownership Report was being filed, the record demonstrates that none of the three reasons mentioned by Hart had any effect at all on ACCLP's ability to prepare and file a full Ownership Report. Hart's letter to the Commission was just another instance of ACCLP's willingness to be disingenuous in order to hide the truth. [63/]

264. This, of course, is further demonstrated by the fact that Harburg, the B&H expert on Ownership Reports, had been able to prepare multiple draft reports, including one draft which was ready for Ramirez's signature. SBH Exh. 86. Had any of the three factors mentioned by Hart actually prevented the preparation of a full Ownership Report, presumably Harburg would

---

[63/] The evidence demonstrates that the decision to submit Hart's letter was made jointly by Ramirez, Bacon and Hart. For another example of ACCLP's willingness to ignore reality in its ownership filings with the Commission, compare SBH Exh. 23 (November 22, 1988 application for consent to acquisition, by Ramirez, of control of WHCT Management, Inc.) with, e.g., SBH Exh. 63, pp. RC7866-67, 7878, 7881, 7884-87, 7890, 7893 (materials demonstrating that Ramirez had already acquired precisely that control at least a before the application was filed).

not have able to prepare the drafts which she did in fact prepare.

265. Most significant, though, are the notations made by Harburg and Bacon relative to the draft Report faxed by Harburg to Bacon on July 31, 1987. According to Harburg's note, Bacon "vote[d] not to file [the full Ownership Report as drafted] because of the implications". SBH Exh. 88, p. 1. According to Bacon's note (which corroborates Harburg's note), Bacon "expressed concern re including ownership rep'ts for WHCT Mgmt & AstroCo because they might be deemed admissions that those entities exercise control over [ACCLP]." SBH Exh. 89, p. 1. In other words, far from the excuses offered by Hart to the Commission in his August 3, 1987 letter, it appears that the real reason for ACCLP's reluctance to file a full Ownership Report were the "implications", the fact that such a Report might be "deemed [an] admission[ ]" concerning the locus of control of ACCLP.

266. This worry about "implications" was rooted in ACCLP's continuing concern about disclosures to SBH. That concern had previously been expressed by both Lance and Bacon, see SBH Exhs. 37 and 39. Ramirez echoed that concern when, in discussing the decision to file a letter in lieu of a Report, he said: "we were always aware of the constant scrutiny that [SBH and its counsel] were putting upon [ACCLP] . . . regarding the structure of our company." Tr. 352. Clearly, Ramirez was aware that SBH remained an adversary which might avail itself of any admissions ACCLP might make, and Ramirez did not want to make any

disclosures which might prove helpful to SBH. [64/] Hart's testimony revealed the same general awareness of the constant presence of SBH. Tr. 616.

267. Again, the stakes were extraordinarily high for ACCLP as of July, 1987. Having elected to consummate the acquisition of the station in 1985 before finality, ACCLP found itself in 1987 with more than $22 million at stake. If ACCLP were suddenly to reverse its previous position and admit instead that it really was not a minority-owned/minority-controlled entity, the result would almost certainly have been reversal of the grant and, for ACCLP and its principals, loss of their investment. Clearly, full and accurate disclosure was not an attractive course, even if such disclosure was required.

268. The decision to file Hart's letter in lieu of a full Ownership Report allowed ACCLP to pick and choose the information to be provided to the Commission. While Hart's letter did purport to set forth the various ownership interests in ACCLP, it did not include two major elements of information which would have been required by a full Report: Hart's letter contained no information about the December 31, 1985 Amended Partnership Agreement, and it contained no information about whether ACCLP's limited partners were properly insulated from the partnership's

---

[64/] Ramirez's own exhibits include evidence of Ramirez's concern, in July, 1987, about the prospects of on-going proceedings at the Commission which could jeopardize ACCLP's license. See Hoffman/TIBS/Ramirez Exh. 6, p. 363 (Ramirez letter, dated July 24, 1987, in which Ramirez refers to "our best hope to position [the station] for the possibility of an extended contest for the license").

activities. SBH Exh. 21.

269. ACCLP's failure to file a copy of its December 31, 1985 Amended Partnership Agreement is obviously significant in and of itself. But the failure to provide the certification is even more significant because, according to the instructions to FCC Form 323,

> the requisite certification cannot be made if the licensee, permittee or respondent has actual knowledge of a material involvement of the limited partner in the management or operation of the media-related business or the partnership.

SBH Exh. 74, p. 3. As of August 3, 1987, ACCLP had been the licensee of Station WHCT-TV for two and one-half years, and yet (a) Ramirez, the individual supposedly wielding complete control of the partnership, did not have a checkbook in Hartford; (b) Ramirez consulted with Boling and Sostek (principals of a limited partner) on a regular basis; and (c) Boling and Sostek were routinely involved in decisions affecting virtually all areas of station operation. In other words, there was no conceivable way that ACCLP could certify that it was properly insulated. [65/]

270. Rather than acknowledge its lack of insulation, as required, ACCLP elected simply to stonewall by ignoring the filing requirement, justifying that election by reference to three factors (i.e., the June 25, 1987 Court of Appeals decision,

---

[65/] Even Ramirez acknowledged this when he executed the July 31, 1987 draft Ownership Report, SBH Exh. 91. In that Report the insulation certification question in Paragraph 5 was answered "no", meaning that ACCLP was acknowledging that it was not insulated as required by Commission rules and policies.

the death of Joel Gibbs, and some fictional "internal reorganization") none of which in fact justified that election. That is, ACCLP did not want to file a full Ownership Report and so it evaded that filing requirement in a blatantly misleading manner.

271. Hart's August 3, 1987 letter stated that "a complete Ownership Report will be filed as soon as possible". SBH Exh. 21. That claim was equally misleading. No further Ownership Reports were filed by ACCLP until December 7, 1988. Hoffman/TIBS/Ramirez Exh. 3, Attachment D, p. 121.

272. The evidence relative to the August 3, 1987 filing overwhelmingly demonstrates ACCLP's concerted efforts to withhold from the Commission and the Courts information which would have completely undermined ACCLP's earlier claims that it was in full compliance with the minority ownership rules and policies. That withholding was accomplished through a clearly misrepresentative letter by Hart purportedly explaining ACCLP's failure to file a full Ownership Report.

273. ACCLP's willingness to dodge the truth relative to its ownership structure did not stop in 1987. In September, 1988, B&H prepared a draft transfer of control application seeking consent to a restructuring of ACCLP's ownership. SBH Exh. 97. However, for reasons which are not apparent in the record, no such restructuring was decided upon until mid-November, 1988. SBH Exh. 142. ACCLP was aware that it faced a potential comparative proceeding, with the window for competing applicants opening as of December 1, 1988. See, e.g., SBH Exh. 90; SBH

Exh. 61. ACCLP felt that it was important to restructure itself before that window would open, which meant that by mid-November, the impetus to restructure was substantial. Tr. 359. [66/]

274. By application filed November 22, 1988, ACCLP sought consent to such restructuring. SBH Exh. 23. The proposed restructuring involved Ramirez's acquisition of all of the stock of WHCT Management, Inc. Again, the application for Commission consent to that proposal was filed on November 22, 1988. But the record demonstrates that the proposed transactions had already been implemented by November 15, 1988, i.e., several days before Commission consent was even sought. SBH Exh. 63, pp. RC 007866-67, 007874, 007878, 007881, 007884-87, 007890, 007893. In other words, while ACCLP indicated in its November 22, 1988 application that the transactions were subject to prior Commission approval and had therefore not been consummated, in fact they had been consummated a week before the application was filed. And since Ramirez himself signed not only the November 22, 1988 application, SBH Exh. 23, p. 4, but also documents evidencing his control of WHCT Management, Inc. as of a week before that application, it is clear that Ramirez was engaging in misrepresentation when he advised the Commission that ACCLP was

---

[66/] ACCLP's concern about the possibility of a comparative proceeding is understandable. In the context of the Shurberg Broadcasting appeal, SBH had no right to discovery. As a result, ACCLP was able to withhold its own damaging internal information and thereby avoid the adverse impact that disclosure of that information would have had. However, ACCLP clearly recognized that, if a comparative proceeding were to be designated, ACCLP's operations would be a matter of detailed inquiry in such proceeding. See, e.g., SBH Exh. 61.

merely "proposing" transactions which had, in fact, already been consummated.

275. Further, while the consummation of the proposed restructuring was reported to the Commission in an Ownership Report filed December 7, 1988, Hoffman/TIBS/Ramirez Exh. 2, Attachment D, pp. 121-27, the record indicates that, as of July-August, 1989, neither Bocchi nor Ramirez believed that that restructuring had theretofore been approved by the Commission. SBH Exhs. 64 and 65.

276. The record evidence leads unavoidably to the conclusion that ACCLP's failure to advise the Commission and/or the Courts of its actual organization and operational practices was intentional, and that ACCLP engaged in repeated misrepresentation and lack of candor in its persistent failure to submit accurate information concerning that organization and those practices.

II. Ultimate Conclusions

277. In 1984, in order to take advantage of a deal which had been negotiated by and on behalf of Astroline Company -- a non-minority entity -- ACCLP was formed at the last minute in order to provide Astroline Company with an entity seemingly in compliance with the Commission's minority distress sale policy. In late May, 1984, ACCLP introduced itself to the Commission as a company of which 21% was owned by Ramirez and which was completely controlled by Ramirez. Those claims were reiterated in, inter alia, ACCLP's assignment application (filed in June, 1984).

278. Those claims were challenged almost immediately by SBH. When the Commission rejected SBH's arguments in December, 1984, SBH immediately filed an appeal with the U.S. Court of Appeals for the District of Columbia Circuit. In its brief in that appeal, ACCLP again reiterated its claims of compliance with the Commission's criteria. The Shurberg Broadcasting appeal was pending before the Court of Appeals at all times through March 30, 1989.

279. The Court of Appeals resolved the case in favor of SBH, finding that the minority distress sale was unconstitutional. In late 1990, ACCLP sought and obtained Supreme Court review on that question, still asserting that ACCLP was in compliance with the Commission's criteria. ACCLP was successful before the Supreme Court, which accepted without any detailed analysis the initial 1984 judgment of the Commission relative to ACCLP's supposed qualification as a minority-owned and minority-controlled entity.

280. The record of the instant proceeding demonstrates conclusively that, notwithstanding the various claims ACCLP advanced along the way, from no later than 1985 -- and conceivably even earlier -- ACCLP was not in compliance with the Commission's rules and policies concerning limited partnerships. Moreover, the record demonstrates conclusively that ACCLP was aware of this lack of compliance. And finally, the record demonstrates that, notwithstanding that awareness, ACCLP failed to advise the Commission and/or the Courts that the representations which ACCLP had made concerning its supposed compliance were not, in fact, true and correct.

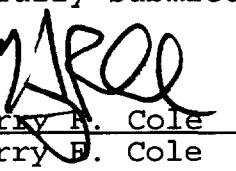
281. The record thus compels the conclusion that ACCLP engaged in a multi-year pattern of misrepresentation and lack of candor in order to preserve its hold on Station WHCT-TV. Such misconduct cannot in any event be tolerated by the Commission. ACCLP's misconduct is especially deplorable in view of the fact that, by failing to be truthful and honest, ACCLP forced the Commission, the Court of Appeals and the Supreme Court unnecessarily to address and resolve a serious constitutional issue of the utmost national importance.

282. ACCLP was a sham, created by the non-minority principals of Astroline Company to advance their own interests. By withholding information the submission of which was in fact required, and by instead letting stand uncorrected misstatements concerning its structure and operating practices, ACCLP managed to persuade the Commission that ACCLP was not a sham. But the record developed in this proceeding clearly establishes the Commission was sadly mistaken in that conclusion, and was affirmatively led to that mistake by ACCLP's misconduct.

283. Accordingly, it is concluded that ACCLP engaged in misrepresentation and lack of candor before the Commission and the Federal Courts relative to its ownership and operating practices. Had ACCLP been truthful concerning its structure and operating practices during the pendency of the initial assignment application (i.e., during the period 1984-1990), ACCLP would not have been qualified to acquire Station WHCT-TV in the first place. That being the case, neither ACCLP nor Hoffman (ACCLP's trustee-in-bankruptcy) can make any legitimate claim to the

station's license. As a result, the above-captioned application for renewal of the license of Station WHCT-TV must be denied.

Respectfully submitted,



/s/ Harry F. Cole
Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Alan Shurberg d/b/a
Shurberg Broadcasting of Hartford

December 8, 1998

CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of December, 1998, I caused copies of the foregoing "Proposed Findings of Fact and Conclusions of Law of Alan Shurberg d/b/a Shurberg Broadcasting of Hartford" to be placed in the U.S. Postal Service, first class postage prepaid, or hand delivered (as indicated below), addressed to the following:

The Honorable John M. Frysiak
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W. - Room 223
Washington, D.C. 20554
(BY HAND)

James Shook, Esquire
Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W. - Room 8202-F
Washington, D.C. 20554
(BY HAND)

Peter D. O'Connell, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Counsel for Martin W. Hoffman,
Trustee-in-Bankruptcy for
Astroline Communications Company
Limited Partnership

Howard A. Topel, Esquire
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Suite 600
Washington, D.C. 20036
Counsel for Two If By Sea
Broadcasting Corporation

Kathryn R. Schmeltzer, Esquire
Fisher, Wayland, Cooper, Leader
& Zaragoza L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006-1851
Counsel for Richard P. Ramirez

/s/ Harry F. Cole
Harry F. Cole